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C O N F I D E N T I A L BRUSSELS 000862

SIPDIS

STATE FOR INL/PC MAREN BROOKS, L/LEI KEN PROPP. DOJ FOR
OIA/KEN HARRIS

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TAGS: [CASC](#) [KCRM](#) [KJUS](#) [PREL](#) [EUN](#) [USEU](#) [BRUSSELS](#)

SUBJECT: STATUS OF BILATERAL PROTOCOLS ON EXTRADITION AND
MUTUAL LEGAL ASSISTANCE

REF: 03 BRUSSELS 05015

Classified By: USEU NAS:Frank Kerber. Reasons: 1.4 (b) and (d)

1. (U) The U.S.-EU Agreements on Extradition and Mutual Legal Assistance (MLA) were signed at the Summit in Washington on June 25, 2003. Before these agreements can be sent to Congress for ratification, protocols to existing bilateral extradition and MLATs must be negotiated. In the limited instances where there are no existing bilateral treaties on either extradition or MLA, new agreements are necessary to create a bilateral obligation to bring into force the U.S.-EU Agreement. The U.S.-EU Agreements and the bilateral protocols will then be sent forward as a package for ratification later this year. The intent of the bilateral protocols is to formally incorporate the updated provisions of the new U.S.-EU Agreements into the existing treaties. Where no extradition or MLA treaty exists, the U.S.-EU Agreements form the initial bases for bilateral cooperation. Bilateral treaty articles not addressed in the U.S.-EU Agreements are unaffected and continue in force.

2. (U) The third and last round of face-to-face negotiations on the bilateral protocols with the current EU Member States were held February 3-5 with Greece, the UK, France, Portugal and Spain. Several states such as The Netherlands and Belgium opted to develop texts through informal exchanges rather than in formal face-to-face negotiation sessions in Brussels. The process will now continue informally until final texts have been agreed. The U.S. will sign the protocols with each country as they are completed. USEU intends to brief the ten accession states as a group in April before beginning individual negotiations with each country. It is hoped that the protocols with the accession states can be concluded prior to submission of the package to Congress. However, if this is not likely, those protocols can be submitted at a later date.

3, (C) In this last round, France and Portugal proved to be the most problematic. Portugal wants to use these protocols to legitimize its current practice of denying extradition in capital cases and those involving life imprisonment based on constitutional grounds, despite the fact that the current bilaterals do not authorize denial on these grounds. France says it is bound to the U.S.-EU Agreements under EU law so does not intend to submit those agreements to its assembly for ratification. France therefore opposes our bilateral protocol approach because it would be viewed as changing the existing bilateral agreements and thus require Assembly approval. It is hoped that by signing protocols with the other Member States as they are completed, pressure can be put on France and Portugal to also agree rather than jeopardize the process.

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